

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Timothy Michael

(b) County of Residence of First Listed Plaintiff Delaware (PA)  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Timothy M. Kolman, Esq. and Eman Abouelseoud, Esq.  
414 Hulmeville Ave, Penndel, PA 19047 (215) 750-3134

**DEFENDANTS**

Walgreen Co., t/d/b/a Walgreens, Walgreen Company,  
Walgreen's, Walgreen's Pharmacy, et al.

County of Residence of First Listed Defendant Lake (IL)  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

James L. Moore, Jr., Esq., 1600 JFK Blvd, Ste 620, Four  
Penn Center, Phila, PA 19103 (215) 564-2928

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1441

Brief description of cause:  
Professional Negligence

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Juan R. SanchezDOCKET NUMBER 2:11-cv-06680-JS

DATE

03/05/2012

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1305 Tarpan Circle, New Hope, Bucks County, Pennsylvania

Address of Defendant: 200 Wilmot Rd., Deerfield, Lake County, IL 60015

Place of Accident, Incident or Transaction: 2319 York Road, Jamison, Bucks County, Pennsylvania  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: 2:11-cv-06680-JS Judge Juan R. Sanchez Date Terminated: 01/30/2012

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place    IN ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Prof. Negligence)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: \_\_\_\_\_

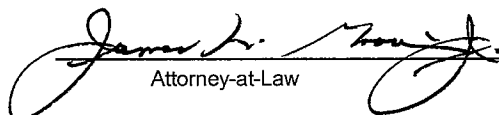
Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/05/2012

  
Attorney-at-Law

057487 (Pennsylvania)

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**TIMOTHY MICHAEL**

**v.**

**CIVIL ACTION NO.**

**WALGREEN CO. t/d/b/a WALGREENS  
WALGREEN COMPANY, WALGREEN'S  
WALGREEN'S PHARMACY and  
WALGREEN DRUGSTORE, INC.  
and  
Dr. JAI D. MISTRY**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

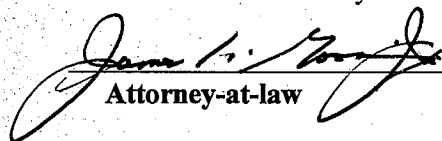
In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

March 5, 2012

**Date**

  
**Attorney-at-law**

Walgreen Co. and Dr. Jai Mistry

**Attorney for Defendants**

(215)564-2928

**Telephone**

(215)564-3281

**FAX Number**

jmoore@tthlaw.com

**E-Mail Address**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**TIMOTHY MICHAEL**

**v.**

**CIVIL ACTION NO.**

**WALGREEN CO. t/d/b/a WALGREENS,  
WALGREEN COMPANY, WALGREEN'S,  
WALGREEN'S PHARMACY and  
WALGREEN DRUGSTORE, INC.  
and  
Dr. JAI D. MISTRY**

**NOTICE OF REMOVAL  
OF DEFENDANT, WALGREEN CO.**

Pursuant to 28 U.S.C. § 1441, *et seq.*, Defendants, Walgreen Co., Walgreen Company, Walgreen's, Walgreen's Pharmacy and Walgreen Drugstore, Inc., collectively properly known as Walgreen Eastern Co., Inc. (hereinafter "Walgreens") and Dr. Jai Mistry, properly known as Jai D. Mistry, RPh (hereinafter "Mistry"), by and through their attorneys, Thomas, Thomas & Hafer LLP, hereby file this Notice of Removal of the entire civil action from the Pennsylvania Court of Common Pleas in Bucks County, captioned *Timothy Michael v. Walgreen Co., et al.*, at No. 2011-08675, to the United States District Court for the Eastern District of Pennsylvania. As grounds for removal, Walgreens and Mistry state the following:

1. Plaintiff, Timothy Michael (hereinafter, "Michael"), commenced this civil action by filing a Writ of Summons on September 29, 2011 in the Pennsylvania Court of Common Pleas, Bucks County captioned *Timothy Michael v. Walgreen Co. t/d/b/a Walgreens, Walgreen Company, Walgreen's, Walgreen's Pharmacy and Walgreen Drugstore, Inc., and Dr. Jai D. Mistry*, at No. 2011-08675, followed by the filing of a Complaint on February 10, 2012, a true and correct copy of which is attached hereto and marked as Exhibit "A."

2. Walgreens was served with a copy of the Complaint on or about February 22, 2012.

3. Mistry was served with a copy of the Complaint on or about February 24, 2012.

4. Michael resides at 1305 Tarpan Circle in New Hope, Pennsylvania, and on information and belief was a citizen of the Commonwealth of Pennsylvania at the time suit was commenced.

5. Walgreens is a New York corporation with its principal place of business in Illinois.

6. Mistry is a foreign born citizen of Canada who resides in Bucks County, Pennsylvania.

7. Michael alleges professional negligence on the part of Walgreens and Mistry by reason of the filling of a prescription with an incorrect medication on or about September 29, 2009. See Exhibit "A" at ¶¶ 4, 5 and 6.

8. Michael alleges that as a result of the conduct of Walgreens and Mistry, he sustained various injuries including violent side effects which caused him pain and suffering, serious and permanent injury, for which he incurred large and unnecessary medical bills, and lost wages as well as loss of employment. Id. at ¶¶ 7, 12, 13, and 16.

9. Michael seek damages in an amount in excess of fifty-thousand dollars (\$50,000.00). Id. at pp. 5, 7 and 8.

10. Allegations of injuries and damages, similar to those alleged by Michael, have been held to establish, on their face, that the amount in controversy exceeds the jurisdictional requirements set forth in 28 U.S.C. §§ 1332(a), and 1441(a). *See, e.g., Samuel-Basset v. Kia Motors Am., Inc.*, 357 F.3d 392, 398 (3d Cir. 2004); *Field v. Allstate*, 2003 WL 22271674 (E.D. Pa. August 4, 2003); *Ferkeritch v. Carnival Cruise*

*Lines*, 2002 WL 31371977 (E.D. Pa. October 17, 2002); *Carroll v. United Airlines, Inc.*, 7 F. Supp. 2d 516 (U.S. Dist. N.J. 1998); *Angus v. Shiley*, 989 F.2d 142 (3d Cir. 1993).

11. In light of the foregoing, Walgreens and Mistry aver that the amount in controversy in this action for any adverse judgment against it exceeds \$75,000.00, exclusive of interests and costs.

12. Because the amount in controversy exceeds \$75,000.00, and because there exists diversity of citizenship (*i.e.*, this action is between citizens of different states, and Walgreens is not a citizen of the Commonwealth of Pennsylvania where the original action was filed), this Court possesses original jurisdiction of this action pursuant to 28 U.S.C. §§ 1332(a), 1441(a), and 1446(b). Furthermore, the Eastern District of Pennsylvania embraces Bucks County, where the current action is pending in the Court of Common Pleas in the Commonwealth of Pennsylvania.

13. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is being filed less than thirty (30) days from February 22, 2012, the date on which Walgreens was first served with Michael's Complaint.

14. No previous Notice of Removal has been filed or made to this Court for the relief sought herein.

15. Accordingly, this lawsuit is properly removed from Pennsylvania State court to the United States District Court, Eastern District of Pennsylvania, pursuant to 28 U.S.C. § 1332(a)(1), 1441(a) and 1446(b).

16. Walgreens and Mistry expressly reserve the right to raise all defenses and objections in this action after it is removed to this Honorable Court.

17. A true and correct copy of this Notice of Removal is being filed with the Prothonotary of the Bucks County Court of Common Pleas, as provided by 28 U.S.C. § 1446(d).

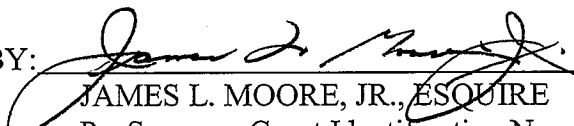


18. Written Notice of the filing of this Notice of Removal will be served upon all parties as required by 28 U.S.C. § 1446(d).

19. No admission of fact, law or liability is intended by this Notice of Removal, and all defenses, affirmative defenses and motions are hereby reserved to the Walgreens.

**WHEREFORE**, Defendants, Walgreen Co., Walgreen Company, Walgreen's, Walgreen's Pharmacy and Walgreen Drugstore, Inc., collectively properly known as Walgreen Eastern Co., Inc. and Dr. Jai D. Mistry, properly known as Jai Mistry, RPh respectfully request that this case be removed from the Pennsylvania Court of Common Pleas in Philadelphia County to the United States District Court for the Eastern District of Pennsylvania.

**THOMAS, THOMAS & HAFFER LLP**

BY:   
JAMES L. MOORE, JR., ESQUIRE  
Pa. Supreme Court Identification No: 57487

Four Penn Center, Suite 620  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
T: (215) 564-2928  
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E: [jmoore@tthlaw.com](mailto:jmoore@tthlaw.com)

Attorneys for Defendant,  
Walgreen Co., Walgreen Company,  
Walgreen's, Walgreen's Pharmacy and  
Walgreen Drugstore, Inc., collectively properly  
known as Walgreen Eastern Co., Inc. and  
Dr. Jai D. Mistry, properly known as Jai Mistry, RPh

Dated: 03-05-12

**EXHIBIT "A"**



KOLMAN ELY, P.C.  
Timothy M. Kolman, Esquire  
Attorney I.D. No. 51982  
Eman Abouelseoud, Esquire  
Attorney I.D. No. 205477  
414 Hulmeville Avenue  
Penn del, PA 19047  
(215) 750-3134

*Attorney for Plaintiffs*

TIMOTHY MICHAEL

Plaintiff,

v.

WALGREEN CO. T/D/B/A WALGREENS  
WALGREEN COMPANY, WALGREEN'S  
WALGREEN'S PHARMACY, and  
WALGREEN DRUGSTORE, INC.

and

DR. JAI D. MISTRY

Defendants.

: COURT OF COMMON PLEAS  
: BUCKS COUNTY

: CIVIL ACTION

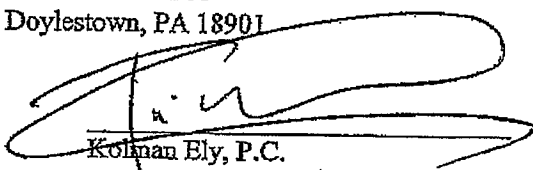
: No: 2011-08675

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service  
Bucks County Bar Association  
135 East State Street  
P.O. Box 300  
Doylestown, PA 18901

  
Kolman Ely, P.C.  
414 Hulmeville Avenue  
Penn del, PA 19047

January 31, 2012

KOLMAN ELY, P.C.  
Timothy M. Kolman, Esquire  
Attorney I.D. No. 51982  
Wayne A. Ely, Esquire  
Attorney I.D. No. 69670  
Eman Abouelseoud, Esquire  
Attorney I.D. No. 205477  
414 Hulmeville Avenue  
Penn del, PA 19047  
(215) 750-3134

*Attorney for Plaintiffs*

TIMOTHY MICHAEL  
305 Tarpan Circle  
New Hope, PA 18938

COURT OF COMMON PLEAS  
BUCKS COUNTY

Plaintiff,

CIVIL ACTION

v.

No: *2011-08675*

WALGREEN CO. T/D/B/A WALGREENS :  
WALGREEN COMPANY, WALGREEN'S :  
WALGREEN'S PHARMACY, and :  
WALGREEN DRUGSTORE, INC. :  
200 Wilmot Road :  
Deerfield, IL 60015 and :

and

DR. JAI D. MISTRY  
c/o Walgreens  
2319 York Road, #9078  
Jamison, PA 18929

Defendants.

**PLAINTIFF'S COMPLAINT**

AND NOW, comes the plaintiff, Timothy Michael, by and through his attorneys, and  
aver as follows:

1. Plaintiff, Timothy Michael (hereinafter "Plaintiff"), is an adult individual residing  
at 1305 Tarpan Circle, New Hope, Pennsylvania 18938.

2. Defendant, Walgreen Co., trading and doing business under as one or more of the above-captioned entities (hereinafter collectively "Defendant Walgreens"), is, upon information and belief, a corporation, partnership, sole proprietorship, unincorporated association or other legal entity existing under the laws of the Commonwealth of Pennsylvania with an address of 2319 York Road, Jamison, Pennsylvania 18929. Defendant Walgreens, regularly conducts business in Bucks County, Commonwealth of Pennsylvania.

3. Defendant, Dr. Jai D. Mistry (hereinafter "Defendant Mistry") is, upon information and belief, an individual employed as a licensed Pharmacist by Defendant Walgreens at 2319 York Road, Jamison, PA 18929.

4. On September 29, 2009, Plaintiff took a prescription for Buspar to Defendants to be filled and subsequently began taking the prescription.

5. Upon information and belief, Plaintiff's prescription was filled and or checked by Defendant Mistry as an agent of Defendant Walgreens.

6. Unbeknownst to Plaintiff, his prescription was filled with an incorrect medication.

7. Over the ensuing days, as a direct and proximate result of the incorrectly-filled prescription, Plaintiff suffered violent side effects, including losing control of his vehicle and driving into a ditch and bizarre behavior at his place of employment.

8. It was later determined that Plaintiff was given the wrong medication by Defendants.

**COUNT I**  
**NEGLIGENCE**  
**Plaintiff v. Defendant Walgreens**

9. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth at length.

10. Defendant Walgreens employed pharmacists and it is believed and hereby alleged that the pharmacist(s) who filled plaintiff's prescription was/were agents; servants, workmen or employees of Defendant Walgreens.

11. Defendant Walgreens failed to exercise the judgment of a reasonable pharmacy in that it:

- (a) Failed to extend proper and reasonable services to Plaintiff;
- (b) Failed to exercise reasonable care and diligence in the application of knowledge and skill to Plaintiff as a patron;
- (c) Failed to properly fill and/or check a prescription;
- (d) Held out expertise which induced Plaintiff to believe that adequate and proper care would be taken when in fact, adequate and proper and reasonable care was not taken;
- (e) Failed to adhere to the accepted procedures of administering drugs to individuals such as Plaintiff;
- (f) Failed to possess the degree of professional learning, skill and ability which others similarly situated ordinarily possess;
- (g). Failed to exercise reasonable care and diligence in the application of its knowledge and skill to Plaintiff;
- (h) Failed to properly select, train, or supervise its pharmacists;
- (i) Failed to conform to the required standard of care when filling the prescription; and
- (j) otherwise acted negligently as may be determined during discovery.

12. As a result of the negligence of Defendant Walgreens, Plaintiff sustained the following injuries:

(a) Extended pain and suffering due to Defendant Walgreen's failure to properly fill Plaintiff's prescription;

(b) Serious and permanent injury due to Defendant Walgreen's failure to properly fill plaintiff's prescription;

(c) Large and unnecessary medical bills incurred;

(d) Lost wages and other expenses incurred as a result of Defendant Walgreen's failure to properly fill plaintiff's prescription;

(e) Loss of employment; and

(f) Mental anguish.

13. As a direct and proximate result of Defendant Walgreens' negligence, Plaintiff has experienced pain, suffering, medical expenses and bills, embarrassment, mental anguish and humiliation, as well as lost wages and future lost wages.

WHEREFORE, Plaintiff demands judgment against Defendant Walgreens in an amount in excess of Fifty Thousand (\$50,000.00) Dollars.

**COUNT II**  
**NEGLIGENCE**  
**Plaintiff v. Dr. Jai Mistry**

14. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth at length.

15. Defendant Mistry, in filling or failing to check Plaintiff's prescription, failed to exercise the judgment of a reasonable pharmacy in that she:

(a) Failed to extend proper and reasonable services to Plaintiff;

(b) Failed to exercise reasonable care and diligence in the application of knowledge and skill to Plaintiff as a patron;

- (c) Failed to properly fill a prescription;
- (d) Held out expertise which induced Plaintiff to believe that adequate and proper care would be taken when in fact, adequate and proper and reasonable care was not taken;
- (e) Failed to adhere to the accepted procedures of administering drugs to individuals such as Plaintiff;
- (f) Failed to possess the degree of professional learning, skill and ability which others similarly situated ordinarily possess;
- (g) Failed to exercise reasonable care and diligence in the application of its knowledge and skill to Plaintiff;
- (h) Failed to conform to the required standard of care when filling the prescription; and
- (i) Otherwise acted negligently as may be determined during discovery.

16. As a result of the negligence of Defendant Mistry, Plaintiff sustained the following injuries:

- (a) Extended pain and suffering due to Defendant Mistry's failure to properly fill Plaintiff's prescription;
- (b) Serious and permanent injury due to Defendant Mistry's failure to properly fill Plaintiff's prescription;
- (c) Large and unnecessary medical bills incurred;
- (d) Lost wages and other expenses incurred as a result of defendant Walgreens' failure to properly fill plaintiff's prescription;
- (e) Loss of employment; and
- (f) Mental anguish.

17. As a direct and proximate result of Defendant Mistry's negligence, Plaintiff has experienced pain, suffering, extensive medical expenses and bills, embarrassment, mental anguish and humiliation, as well as lost wages and future lost wages.

WHEREFORE, Plaintiff demands judgment against Defendant Mistry in an amount in excess of Fifty Thousand (\$50,000.00) Dollars.

**COUNT III - VICARIOUS LIABILITY**  
**Plaintiff, Timothy Michael v. Defendant Walgreens**

18. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth at length.

19. Defendant Mistry and others, including, but not limited to, pharmacy staff, who acted for and on behalf of Defendant Walgreens as its agents, servants, employees, directors or officers of Defendants were held out as such.

20. At all relevant times hereto, the pharmacists and pharmacy staff were acting within the scope of their employment agents, servants, employees, directors or officers of Defendant Walgreens.

21. Defendant Walgreens is vicariously liable for the commissions or omissions of the pharmacists and pharmacy staff, as though the aforesaid entity performed the acts or omissions itself.

22. The pharmacist and pharmacy staff who treated Plaintiff were and are the ostensible and/or corporate agents of Defendant Walgreens, as there was a holding out to the public that Defendant Walgreens and its employees were affiliated with one another, either as agents, servants or employees or in a joint venture.



23. As a direct and proximate result of the conduct set forth above, Plaintiff has suffered damages as aforesaid, extended pain and suffering, extensive medical expenses and bills, embarrassment, mental anguish, and lost wages and future lost wages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars and in excess of the arbitration limit of this court.

**COUNT IV**  
**CORPORATE NEGLIGENCE**  
**Plaintiff v. Defendant Walgreens**

24. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth at length.

25. Defendant Walgreens was further negligent through its agents, servants, workman, officers, directors and/or employees under theories of corporate liability, in that:

(a) It failed to fulfill its duty to select and retain only competent pharmacists and pharmacy staff, in that it allowed the pharmacists and pharmacy staff and others to fill prescriptions within its when they were not qualified to do so;

(b) It failed to retain, train and supervise the pharmacists and pharmacy staff and others who participated in Plaintiff's care; and

(c) It failed to fulfill its duty to properly formulate and adopt adequate rules and procedures to ensure the quality of care provided to patients by its agents, servants, workmen or employees.

WHEREFORE, Plaintiff demands judgment against Defendant Walgreens in an amount in excess of Fifty Thousand (\$50,000.00) Dollars.

Respectfully submitted,

KOLMAN ELY, P.C.

By: 

Timothy M. Kolman, Esquire

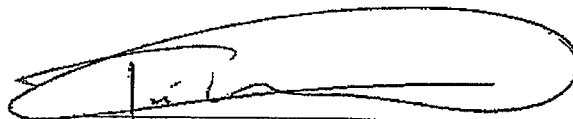
Wayne A. Ely, Esquire

Eman Abouelseoud, Esquire

January 31, 2012

VERIFICATION

I, Timothy M. Kolman, Esquire, verify that the statements made in Plaintiff's Complaint are true and correct and to the best of my knowledge, information, and belief, and that this Verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

A handwritten signature in black ink, appearing to read 'Tim Kolman', enclosed within a large, loopy oval shape.

Timothy M. Kolman, Esquire

Date: 1/31/2012

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**TIMOTHY MICHAEL**

v.

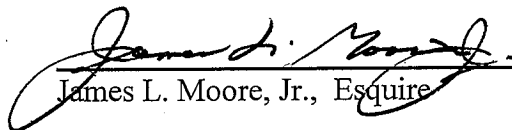
CIVIL ACTION NO.

**WALGREEN CO. t/d/b/a WALGREENS,  
WALGREEN COMPANY, WALGREEN'S,  
WALGREEN'S PHARMACY and  
WALGREEN DRUGSTORE, INC.  
and  
Dr. JAI D. MISTRY**

**CERTIFICATE OF SERVICE**

I, James L. Moore, Jr., Esquire, do hereby certify that a true copy of the within  
Notice of Removal was served upon the following counsel via U.S. Mail, First Class,  
Postage Prepaid on the 5<sup>th</sup> day of March, 2012:

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Walgreen's, Walgreen's Pharmacy and  
Walgreen Drugstore, Inc., collectively  
properly known as Walgreen Eastern Co.,  
Inc. and Dr. Jai D. Mistry, properly known  
as Jai Mistry, RPh